

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ESTATE OF MILDRED T. QUIDLEY)	
DECEASED, KAREN Q. PIERCE,)	
EXECUTOR,)	SYM
)	
Petitioner,)	
)	
v.)	Docket No. 7799-10.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	

ORDER AND DECISION

This case is before the Court on petitioner's motion for litigation and administrative costs pursuant to section 7430 and Rule 231, as amended (motion for costs).¹ We conclude that an evidentiary hearing on petitioner's motion for costs is not necessary. See Rule 232(a)(2).

Background

On January 5, 2012, the parties filed a stipulation of settled issues, in which the parties agreed that there is no deficiency in estate tax due from petitioner, that there is no penalty under section 6662(h) due from petitioner, and that there is no penalty under section 6662(a) due from petitioner. On February 8, 2012, petitioner filed with this Court a "Motion For Awarding of Costs and Certain Fees Under Section 7430". On March 13, 2012, respondent filed a response in opposition to petitioner's motion for costs. On March 28, 2012, this Court, after finding that petitioner's motion appeared to be incomplete and missing certain pages, ordered petitioner to file an amended motion including the missing pages. Petitioner filed

¹Unless otherwise indicated, all section references are to the Internal Revenue Code (Code), as amended. All Rule references are to the Tax Court Rules of Practice and Procedure.

its amended motion on May 18, 2012.² On June 1, 2012, the Court ordered that respondent could file a response to petitioner's amended motion for costs by June 15, 2012. Respondent did not file a response. On May 20, 2013, the Court ordered petitioner to file a reply to respondent's March 13, 2012, response. On August 9, 2013, petitioner filed its reply to respondent's March 13, 2012, response.

On November 12, 2013, the Court ordered the parties to file memoranda stating their respective legal positions as to whether the estate's net worth should be measured on the basis of acquisition costs (as opposed to fair market value) and whether for this purpose the estate should be deemed to have acquisition costs separate and independent from those of the decedent. Additionally, the Court ordered petitioner, insofar as it sought to assert that the estate met the net worth requirement determined by reference to acquisition costs, to file a second amendment to its motion for costs. The second amendment was to include a Rule 231(b)(4) statement that the estate met the net worth requirement and also a statement that showed the estate's net worth as of the date of the decedent's death as well as each asset's acquisition cost, taking into account the principles discussed in Broadbuss v. U.S. Army Corps. of Eng'rs, 380 F.3d 162, 170 (4th Cir. 2004), and the estate's liabilities as of the date of the decedent's death. The parties' memoranda and petitioner's second amendment to its motion for costs, if applicable, were to be filed with the Court on or before December 6, 2013. On December 6, 2013, respondent timely filed his memorandum in response to the Court's November 12, 2013, Order. Petitioner has filed no response.

Discussion

Section 7430(a) permits the award of reasonable administrative and litigation costs to a prevailing party in an administrative or court proceeding brought against the United States in connection with the determination of any tax, interest, or penalty under the Code. An award of reasonable administrative and litigation costs may be made where the taxpayer is the prevailing party and the taxpayer did not unreasonably protract the administrative or judicial proceedings. See sec. 7430(a) and (b)(3). To be a prevailing party, the taxpayer must: (1) substantially prevail with respect to either the amount in controversy or the most significant issue or set of issues presented and (2) meet certain net worth

²By Order dated November 12, 2013, petitioner's amended motion for costs was recharacterized as petitioner's amendment to motion for awarding costs and certain fees under section 7430 (collectively referred to as motion for costs).

requirements found in 28 U.S.C. sec. 2412(d)(2)(B), as in effect on October 22, 1986 (the net worth requirement). See sec. 7430(c)(4)(A)(i) and (ii). In his response to the motion for costs, respondent has conceded that petitioner substantially prevailed with respect to the amount in controversy or the most significant issues presented and did not unreasonably protract the proceedings. The parties disagree, however, as to whether petitioner meets the net worth requirement.

Rule 231(b)(4) provides that a motion for the award of administrative and litigation costs must contain “a statement that the moving party meets the net worth requirements, if applicable, of section 2412(d)(2)(B) of title 28, United States Code (as in effect on October 22, 1986), which statement shall be supported by an affidavit or a declaration executed by the moving party and not by counsel for the moving party”. Taxpayers bear the burden of establishing that they meet the net worth requirement. See Rule 232(e); see also Dixon Int’l Serv. Corp. v. Commissioner, 94 T.C. 708, 718-719 (1990); Polyco, Inc. v. Commissioner, 91 T.C. 963, 967 (1988). If a taxpayer, in a motion for costs, fails to establish net worth, and the Commissioner challenges whether the taxpayer has met the net worth requirement, the taxpayer must provide sufficient evidence establishing that it meets the net worth requirement. See Park v. Commissioner, T.C. Memo. 2002-232, and cases cited therein.

An estate meets the net worth requirement if its net worth does not exceed \$2 million as of the date of the decedent’s death. See sec. 7430(c)(4)(A)(ii) and (D)(i); 28 U.S.C. sec. 2412(d)(2)(B). In its motion for costs, petitioner asserts that it meets the net worth requirement because the estate’s “current” net worth is “\$567,465.00 which is composed only of lands and buildings as shown on Exhibit A” of the motion for costs. The motion for costs states that petitioner “owns the exact real property in 2012, as it did in 2005, when * * * [decedent] passed away * * *. Petitioner had to sell their lone stock that they held at a loss in order to pay for part of the administrative costs * * *”. Notably, petitioner’s motion for costs does not purport to establish the estate’s net worth as of the date of the decedent’s death, as required by section 7430(c)(4)(D)(i) and Rule 231(b)(4).

In his response to petitioner’s motion for costs, respondent contends that the estate failed to meet the net worth requirement because on Form 706, United States Estate (and generation-skipping transfer) Tax Return, the estate reported the value of the total gross estate as \$2,162,404 as of the date of the decedent’s death. In its reply to respondent’s response, petitioner does not dispute that the estate’s Form 706 showed its total gross estate as \$2,162,404, but contends that the estate meets

the net worth requirement because the “taxable estate”, as reported on Form 706 and as determined after the estate’s election to value certain of its property pursuant to section 2032A, was \$1,363,512.

Although the term “net worth” is not defined in 28 U.S.C. sec. 2412(d)(2)(B), this Court and other courts have defined it as representing assets minus liabilities. See Freeman v. Mukasey, 2008 WL 1960838 (9th Cir. 2008) (“The common and well-established meaning of the term ‘net worth’ is the difference between * * * total assets and * * * total liabilities.”); Broaddus v. U.S. Army Corps. Eng’n’s, 380 F.3d at 169 (calculating net worth as a function of assets and liabilities); City of Brunswick, Ga. v. United States, 849 F.2d 501, 503 (11th Cir. 1988); Eifert v. Commissioner, T.C. Memo. 1997-214. The parties apparently agree that the estate’s net worth should be determined with respect to the fair market value of the estate’s assets as of the date of the decedent’s death.³

Petitioner’s section 2032A election does not affect the fair market value of the estate’s assets for purposes of applying the net worth requirement.⁴ Generally, for estate tax purposes, property is valued at fair market value based on its highest and best use. See sec. 2031; sec. 20.2031-1(b), Estate Tax Regs. Section 2032A, however, permits an estate to elect to value real property used for farming and small business purposes on the basis of income capitalization rather than on the basis of highest and best use. Sec. 2032A(e)(7); Williamson v. Commissioner, 93 T.C. 242, 244 (1989), aff’d, 974 F.2d 1525 (9th Cir. 1992); Estate of Heffley v. Commissioner, 89 T.C. 265, 271 (1987), aff’d, 884 F.2d 279 (7th Cir. 1989). These special valuation rules apply, however, only for purposes of calculating estate tax liability. In fact, section 2032A(a), expressly states that the special

³Petitioner has not responded to the Court’s November 12, 2013, order or otherwise expressed a view as to whether the estate’s net worth should be determined with respect to the estate’s acquisition costs and has not attempted to show what the estate’s acquisition costs might have been. We deem petitioner to have waived any argument that the estate’s net worth should be determined by reference to acquisition costs.

⁴Similarly, deductions allowable against the gross estate in computing the taxable estate (e.g., administration expenses and debts under sec. 2053, losses during administration under sec. 2054, charitable contributions under sec. 2055, and qualified transfers to the decedent’s surviving spouse under sec. 2056) do not affect the fair market value of the estate’s assets.

valuation provisions apply for “purposes of this chapter [i.e., Chapter 11--The Estate Tax]”; consequently they do not apply for purposes of Chapter 76--Judicial Proceedings, which includes section 7430.

Petitioner has advanced no convincing reason why the fair market value of the estate’s assets as of the date of the decedent’s death was any less than the \$2,162,404 that the estate reported on its Form 706 and has otherwise made no adequate showing that the estate meets the net worth requirement. Consequently, petitioner is not eligible for costs under section 7430. See sec. 7430(c)(4)(A)(ii) and (D)(i); 28 U.S.C. sec. 2412(d)(2)(B).

Accordingly, for cause, it is

ORDERED: That petitioner’s motion for awarding of costs and certain fees under section 7430, filed February 8, 2012, as amended, is denied. It is further

ORDERED AND DECIDED: That there is no deficiency in estate tax due from, nor overpayment due to, petitioner. It is further

ORDERED AND DECIDED: That there is no penalty due from petitioner under the provisions of section 6662(h). It is further

ORDERED AND DECIDED: That there is no penalty due from petitioner under the provisions of section 6662(a).

(Signed) Michael B. Thornton
Chief Judge

ENTERED: **JAN 10 2014**